

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Susruta Sudula	Team: Team # 2	CCRB Case #: 201213760	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/22/2012 7:37 PM	Location of Incident: § 87(2)(b)		18 Mo. SOL 4/22/2014		Precinct: 47
Date/Time CV Reported Tue, 10/23/2012 10:17 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/23/2012 10:17 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Spalding	05171	927545	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Theos	09411	945050	047 PCT
2. POM Daniel Tonnessen	24252	898643	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Joseph Spalding	Abuse: Sgt. Joseph Spalding stopped § 87(2)(b)	§ 87(2)(b)
B . SGT Joseph Spalding	Discourtesy: Sgt. Joseph Spalding acted discourteously toward § 87(2)(b)	§ 87(2)(b)
C . SGT Joseph Spalding	Abuse: Sgt. Joseph Spalding searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On October 23, 2012, § 87(2)(b) called the CCRB and filed the following complaint (encl. 3A-B). On October 22, 2012, officers approached § 87(2)(b) as he entered his vehicle. The following allegations resulted:

- **Allegation A: Abuse of Authority- Sgt. Joseph Spalding stopped** § 87(2)(b)
§ 87(2)(g)
- **Allegation B: Discourtesy- Sgt. Joseph Spalding acted discourteously toward** § 87(2)(b)
- **Allegation C: Abuse of Authority- Sgt. Joseph Spalding searched** § 87(2)(b)
§ 87(2)(g)

On October 25, 2012, mediation was presented to § 87(2)(b) but he declined.

This case was initially assigned to Investigator Rebecca Best. It was reassigned to Investigator Susruta Sudula on April 1, 2013.

Results of Investigation

Civilian Statement

Complainant/ Victim: § 87(2)(b)

- A § 87(2)(b)-old, 5'11" tall, 165 pound, black male with short, black dreadlocks and brown eyes.

CCRB Testimony

§ 87(2)(b) provided a statement to CCRB on January 29, 2013 (encl. 4A-F). On October 22, 2012, at approximately 7:30 p.m., § 87(2)(b) exited his apartment located at § 87(2)(b) in the Bronx. § 87(2)(b) was wearing a gray polyester jacket and a "Rasta" hat. § 87(2)(b) had his keys and his cellular phone in his hands. § 87(2)(b) denied going into his pockets at any time. § 87(2)(b) denied having anything in his back pockets.

§ 87(2)(b) noticed his neighbor, § 87(2)(b) who lives one house away on the same block, standing on the steps of her house. § 87(2)(b) also noticed two police officers on foot coming down the street. The two officers stopped to speak with § 87(2)(b) and § 87(2)(b) heard § 87(2)(b) tell the officers to "go around the back" of the house. § 87(2)(b) did not initially know why the officers were in the area. § 87(2)(b) continued walking and crossed the street to go to his car, described as a 1996 tan Maxima. § 87(2)(b) sat in his car but had not yet started the car when he noticed Sgt. Spalding shining a flashlight at him through the driver's side of the car from across the street.

At this time § 87(2)(b) began screaming repeatedly, "It's not him, it's the lady in the back." The officers did not interact with § 87(2)(b) while she was screaming. § 87(2)(b) had his windows rolled down and he told Sgt. Spalding to take the light off of his face. When Sgt. Spalding approached the vehicle, § 87(2)(b) exited with his cellular phone in his hand and closed his driver's door. PO Theos was about six feet behind Sgt. Spalding.

Sgt. Spalding asked § 87(2)(b) why he was pushing his chest out “like he was somebody.” § 87(2)(b) denied making any physical movements. § 87(2)(b) held his phone up to begin recording the interaction. Sgt. Spalding told § 87(2)(b) that he would not play the “phone game” with him and took the phone from § 87(2)(b)’s hand and slammed it on top of the car. § 87(2)(b)’s phone was not damaged. Sgt. Spalding then turned § 87(2)(b) around and handcuffed him behind his back. § 87(2)(b) asked Sgt. Spalding why he was being handcuffed and Sgt. Spalding repeated that § 87(2)(b) was pushing his chest out. During this time § 87(2)(b) was still saying “it’s not him.”

While § 87(2)(b) was handcuffed, he asked the officers why he was being arrested, to which the officers stated that § 87(2)(b) was not going to be locked up. § 87(2)(b) was handcuffed for approximately 10 minutes. Neighbors who had come out of their homes told § 87(2)(b) to calm down.

Also while handcuffed, Sgt. Spalding searched § 87(2)(b). Sgt. Spalding lifted § 87(2)(b)’s shirt, felt around his waistband, put his hands in his front and back pant pockets, and put his hands in the outer and inner pockets of his jacket. Sgt. Spalding then asked § 87(2)(b) for his license and took § 87(2)(b)’s wallet out of his pocket.

Sgt. Spalding and PO Theos went back to their marked vehicle and left § 87(2)(b) by his car still handcuffed. When the officers returned, Sgt. Spalding walked past § 87(2)(b) and stopped a few feet ahead of where he was standing handcuffed. PO Theos removed the handcuffs and gave § 87(2)(b) back his license. PO Theos told § 87(2)(b) they had received a 911 call about a gun in the area. The entire incident lasted approximately 20 minutes.

At no time did Sgt. Spalding give § 87(2)(b) any instructions. Sgt. Spalding did not ask § 87(2)(b) to put his hands down, did not ask him what he had in his pockets, nor did he tell him to put the phone down. The officers did not ask § 87(2)(b) for his name. § 87(2)(b) was never asked about a gun. § 87(2)(b) was not issued a summons or arrested.

Witness Telephone Statement: § 87(2)(b)

On June 5, 2013, § 87(2)(b) confirmed that she was the individual who called 911 on October 22, 2012 (encl. 4G). When § 87(2)(b) exited her building, § 87(2)(b) was already handcuffed. § 87(2)(b) did not see any officer physically interact with § 87(2)(b) or place his hands on him. She did not see any incident with a cell phone and only saw one when § 87(2)(b) was talking on it after his handcuffs were removed.

Attempts to Contact Civilians

Between January 15, 2013 and February 19, 2013, six phone calls were placed to a phone number provided by § 87(2)(b) for § 87(2)(b) and voicemails were left. On February 6, 2013, a Lexis-Nexis search provided a different phone number for § 87(2)(b). Between February 11, 2013 and June 4, 2013, five phone calls were placed to the phone number found in the Lexis-Nexis search and voicemails were left. On February 11, 2013 and March 5, 2013, please call letters were sent to § 87(2)(b). To date, none of the letters sent to § 87(2)(b) were returned and § 87(2)(b) has failed to contact the CCRB.

NYPD Statements:

Subject Officer: SERGEANT JOSEPH SPALDING

- *A 6'0" tall, 230 pound, bald, black male with brown eyes.*
- *On October 22, 2012, Sgt. Spalding worked from 2:50 p.m. to 11:47 p.m. as the patrol supervisor. He was working with PO Theos in a marked RMP 3531.*

Memo Book

At 7:30 p.m., there was a report of a dispute with a firearm at § 87(2)(b) At 7:55 p.m., a stop and frisk report was prepared by PO Tonnessen.

CCRB Testimony

Sgt. Spalding provided a statement at the CCRB on May 29, 2013 (encl. 5A-F). On October 22, 2012, at approximately 7:30 p.m., Sgt. Spalding and PO Theos were conducting routine patrol when the call for a dispute with a firearm came over the radio. PO Theos was the operator of the vehicle. The call stated that the father of a woman's child threatened her and her new boyfriend with a firearm. The description provided was a male black running towards a gold car. Sgt. Spalding was three to four blocks away from the incident location so they responded to the call within a few minutes.

Upon arriving in front of the location of the call, Sgt. Spalding observed a black, Jamaican male entering a gold Maxima. This vehicle was located directly across the street from the address where the call came from. Sgt. Spalding was shown a license photograph of § 87(2)(b) who he confirmed was the individual he interacted with on the day in question. § 87(2)(b) was wearing cargo-style work clothes, a knit hat, a sweater, a jacket and tan work boots.

Sgt. Spalding exited the marked patrol car and asked § 87(2)(b) if he could speak with him for a second. PO Theos remained at Sgt. Spalding's side during this initial interaction. Sgt. Spalding informed § 87(2)(b) that he was conducting an investigation. § 87(2)(b) asked why Sgt. Spalding had to speak with him. Sgt. Spalding stated that he was looking for a firearm and asked § 87(2)(b) for his name and if he lived at the location. § 87(2)(b) told Sgt. Spalding that he did not have to speak to him. Sgt. Spalding again told § 87(2)(b) that he was conducting an investigation and § 87(2)(b) needed to answer his questions. Sgt. Spalding never instructed § 87(2)(b) to exit the vehicle and never had his gun out.

§ 87(2)(b) started calling Sgt. Spalding "Babylon" and said that Sgt. Spalding was only stopping him because he was black. When Sgt. Spalding walked over to § 87(2)(b) § 87(2)(b) put his hands in his jacket pocket. Sgt. Spalding opened the car door so that he stood in front of § 87(2)(b) § 87(2)(b) Sgt. Spalding reached in and told § 87(2)(b) not to put his hands in his pockets. Sgt. Spalding removed § 87(2)(b) from the vehicle by grabbing his left arm and pulling him out. Sgt. Spalding turned § 87(2)(b) around and pulled his hands out of his pockets to place him in handcuffs.

When § 87(2)(b)'s hands were removed from his pockets, it was found that he had two cellphones in his hands. Sgt. Spalding placed the cellphones on the hood of the car. At no point did he slam the phones onto the top of the car. Sgt. Spalding again asked for § 87(2)(b)'s information. § 87(2)(b) became more agitated and started moving around. At no point did § 87(2)(b) himself answer Sgt. Spalding's questions. Sgt. Spalding handcuffed § 87(2)(b) because Sgt. Spalding did not know if § 87(2)(b) had a weapon and had not frisked him or searched him. He did not want § 87(2)(b) to be able to lunge for a weapon if he had one.

After § 87(2)(b) was handcuffed, Sgt. Spalding frisked § 87(2)(b)'s entire body. Prior to the frisk, Sgt. Spalding did not see any bulges, but stated that § 87(2)(b) had been wearing multiple layers so he would not have been able to see anything regardless. Sgt. Spalding did not feel or find anything during the frisk. He could not specifically remember if he lifted § 87(2)(b)'s shirt during the frisk. Sgt. Spalding did not believe he removed any items from § 87(2)(b)'s pocket, such as his wallet.

At that point, approximately four minutes after Sgt. Spalding began his interaction with § 87(2)(b), a bystander told Sgt. Spalding that the man with the firearm had left in a gold car. She also told Sgt. Spalding that § 87(2)(b) lived in the area. Sgt. Spalding did not have any further information for this female. She may have witnessed the interaction. Sgt. Spalding described the bystander as an older Jamaican female.

PO Tonnessen arrived at the scene. Then, the woman who filed the complaint came out of her building and informed Sgt. Spalding that § 87(2)(b) was not the individual with the firearm. Sgt. Spalding immediately removed § 87(2)(b)'s handcuffs.

The dispatcher relayed additional information that the individual who left the scene left in a gold minivan. § 87(2)(b) continued yelling. Sgt. Spalding told PO Tonnessen to deal with § 87(2)(b) and Sgt. Spalding spoke with the complainant, who told him that the perpetrator is usually transient and she did not know what car he drove.

§ 87(2)(b) asked Sgt. Spalding for his name and command, which Sgt. Spalding provided. § 87(2)(b) said that he wanted the information because Sgt. Spalding pulled him out of the car, cursed at him and beat him up because he was black. Sgt. Spalding told § 87(2)(b) that he was black too and did not stop him because of that. He also questioned when he cursed at § 87(2)(b) but § 87(2)(b) would not provide any more information, so Sgt. Spalding stopped interacting with him. Sgt. Spalding instructed PO Tonnessen to prepare a Stop, Question and Frisk Report. Sgt. Spalding did not obtain the information listed in the report and did not relay any information to PO Tonnessen. PO Tonnessen spoke with § 87(2)(b) directly. Sgt. Spalding did not know how PO Tonnessen obtained § 87(2)(b)'s information. He was unable to find the perpetrator for the initial complaint.

Sgt. Spalding clarified some of the information listed in the Stop, Question and Frisk Report. The refusal to comply with officers directions referred to the totality of the situation including § 87(2)(b) not providing his information and being noncompliant. The physical force hands on suspect and handcuffing suspect was Sgt. Spalding pulling § 87(2)(b) from the vehicle and handcuffing him. No firearm was recovered.

§ 87(2)(b) never tried to record the incident. Sgt. Spalding did not see any other individual try to record the incident either.

Witness Officer: PO JOHN THEOS

- A 5'8" tall, 195 pound white male with brown hair and brown eyes.
- On October 22, 2012, PO Theos was working from 3:00 p.m. to 11:35 p.m. PO Theos was in uniform and was working as the Sergeant Operator for Sgt. Spalding. They were in marked vehicle 3531.

Memo Book

At 7:30 p.m., there was a report of a family dispute with a firearm at § 87(2)(b). At 7:31 p.m., PO Theos arrived at the location. At 7:34 p.m., one male was stopped by PO Tonnessen at

the location who matched the description and was in a gold car, § 87(2)(b). The complainant/victim was § 87(2)(b). At 7:40 p.m., a report was prepared for a family dispute with no arrest regarding SPRINT number § 87(2)(b).

CCRB Testimony

PO Theos provided a statement at the CCRB on May 28, 2013 (encl. 6A-E). § 87(2)(g)

Sgt. Spalding and PO Theos stopped § 87(2)(b) to question him to determine if § 87(2)(b) was the subject of the 911 call and had a firearm on him. The officers told § 87(2)(b) to stop his vehicle and PO Theos informed § 87(2)(b) the reason for the stop, though PO Theos could not detail the exact statement made. PO Theos could not recall if § 87(2)(b) was ever handcuffed. He could not recall if § 87(2)(b)'s cell phone had been out during the incident. PO Theos could not recall if Sgt. Spalding took § 87(2)(b)'s cell phone or slammed it down.

PO Theos could not recall if Sgt. Spalding placed his hands on § 87(2)(b) or if he lifted up § 87(2)(b)'s shirt and felt around his waistband. PO Theos could not remember if Sgt. Spalding went into § 87(2)(b)'s pockets. No firearm was recovered.

There were other civilians around, but PO Theos only interacted with § 87(2)(b) and the residents who lived with her. PO Theos wanted to do a show-up to see if § 87(2)(b) was the individual she had called about. PO Theos was present throughout the incident.

§ 87(2)(b) was upset and irritated during the incident. His voice was raised and at one point, he was yelling. PO Theos could not remember what § 87(2)(b) was yelling.

Witness Officer: PO DANIEL TONNESSEN

- *A 5'6" tall, 200 pound white male with brown eyes and a receding hairline of black hair.*
- *On October 22, 2012, PO Tonnessen was working from 3:00 p.m. to 11:35 p.m. and was assigned to summons scooter. He was in uniform and working in RMP 5120.*

Memo Book

At 7:30 p.m., there was a report of a gun and a domestic dispute at Corsa Avenue. A 250 was prepared for § 87(2)(b) § 87(2)(b) old, D.O.B. § 87(2)(b) of § 87(2)(b) Bronx NY in gold Nissan, plate number § 87(2)(b). The 250 was prepared with no ID. Other report created by PO Theos for C/V.

Handwritten Stop, Question and Frisk Report (encl. 7B-C)

The duration of the stop was five minutes and the crime suspected was controlled possession of a weapon. The reason noted for the stop was that the individual fit a provided description. PO Tonnessen obtained § 87(2)(b)'s information verbally and the reason for the stop was explained. Physical force was used to handcuff and hands were placed on § 87(2)(b). § 87(2)(b) was frisked because a violent crime was suspected, § 87(2)(b) refused to comply with officer's directions and there was a reasonable suspicion of weapons. § 87(2)(b) was not searched and weapons were not found. § 87(2)(b)'s demeanor was described as aggravated and uncooperative. Additional factors that led to the stop were the time of day corresponding to reports of criminal activity, proximity to crime location, and § 87(2)(b) was in a gold car that matches the description of the perpetrator's car and near the location of the call. § 87(2)(b) was not arrested or issued a summons.

CCRB Testimony

PO Tonnessen provided a statement at the CCRB on May 28, 2013 (encl. 7A-H). § 87(2)(g)

PO Tonnessen arrived at the scene because this was a gun run. Sgt. Spalding and § 87(2)(b) were on the street standing next to a gold car.

Sgt. Spalding provided instructions to § 87(2)(b) but PO Tonnessen could not remember what they were. § 87(2)(b) was boisterous and angry. PO Theos was at the victim's home, identified by the investigation as § 87(2)(b)

PO Tonnessen informed § 87(2)(b) that there was a call for a gold car and a man inside with a gun. PO Tonnessen asked § 87(2)(b) for his information for the preparation of the Stop, Question and Frisk Report. PO Tonnessen received § 87(2)(b)'s information verbally and did not recall if he received § 87(2)(b)'s license.

PO Tonnessen did not see § 87(2)(b) have his cellphone out at any point. He did not see Sgt. Spalding take § 87(2)(b)'s cellphone and slam it down. § 87(2)(b) was not handcuffed during his presence. PO Tonnessen did not see Sgt. Spalding search § 87(2)(b) but acknowledged that he had arrived on the scene later and did not see the full interaction between Sgt. Spalding and § 87(2)(b)

PO Tonnessen was shown the handwritten Stop, Question and Frisk Report. He stated that the information for § 87(2)(b) was provided to him by § 87(2)(b) himself. The other information regarding the stop, however, was relayed to him.

NYPD Documents

911 CD and SPRINT (encl. 8A, 12D)

On October 22, 2012, at 7:30 p.m., § 87(2)(b) called 911 from § 87(2)(b) to report that her baby's father pointed a gun and a screwdriver at her. § 87(2)(b) described her baby's father as a black male but did not know what he was wearing. She stated that he drove away very quickly in a big, champagne color van. At 7:31 p.m., a description was relayed over the radio for the perpetrator being a male black in his mid-20s and wearing a brown shirt. It was relayed that the perpetrator fled the location in a gold minivan going in an unknown direction. At 7:55 p.m., ST1 marked the job as family offense with no arrest and a report prepared.

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 10, 2013, more than four months after the 90-day filing period, with regard to the incident (encl. 13E).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

- § 87(2)(b) has filed one prior CCRB complaint. § 87(2)(b)

Subject Officer CCRB History

- Sgt. Spalding has been a member of the service for 12 years and there are no substantiated CCRB allegations against him (encl. 1A).

Conclusion

Identification of Subject Officer

Sgt. Spalding acknowledged his interaction with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A: Abuse of Authority- Sgt. Joseph Spalding stopped § 87(2)(b)

It is undisputed that Sgt. Spalding stopped § 87(2)(b) within several minutes, when he was entering a tan car in proximity to a radio run for a domestic involving a black male with a gun. The Stop, Question and Frisk Report lists that the crime suspected was controlled possession of a weapon and the reason for the stop was that the individual fit a provided description. Additional factors that led to the stop were the time of day corresponding to reports of criminal activity, proximity to crime location, and a gold car that matched the description of the perpetrator's car near the location of the call.

According to Patrol Guide Procedure 212-11, a stop is a temporary detention a person for questioning. An officer may stop an individual when he or she reasonably suspects that the individual has committed, is committing or is about to commit a felony or a misdemeanor (encl.0A-C).

§ 87(2)(g)

Allegation B: Discourtesy- Sgt. Joseph Spalding acted discourteously toward § 87(2)(b)

Allegation C: Abuse of Authority- Sgt. Joseph Spalding searched § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) alleged that Sgt. Spalding took his phone when he tried to record the incident and slammed it on top of the car. § 87(2)(b) also alleged that while handcuffed, Sgt. Spalding lifted § 87(2)(b)'s shirt, felt around his waistband, put his hands in his front and back pants pocket, put his hands in the outer and inner pockets of his jacket, and removed § 87(2)(b)'s wallet.

Sgt. Spalding observed § 87(2)(b) place his hands in his pockets and when § 87(2)(b)'s hands were removed, Sgt. Spalding found that § 87(2)(b) was holding two cellphones. Sgt. Spalding placed the cellphones on the hood of the car. At no point did he slam the phones onto the top of the car. PO Theos could not recall if Sgt. Spalding took § 87(2)(b)'s cell phone or slammed it down. PO Tonnessen did not see Sgt. Spalding take § 87(2)(b)'s cellphone and slam it down. Sgt. Spalding performed a frisk on § 87(2)(b) for weapons and could not specifically remember if he lifted § 87(2)(b)'s shirt during the frisk. Sgt. Spalding did not believe he removed any items from § 87(2)(b)'s pocket, such as his wallet. PO Theos could not recall if Sgt. Spalding placed his hands on § 87(2)(b) or if he lifted up § 87(2)(b)'s shirt and felt around his waistband. PO Theos could not remember if Sgt. Spalding went into § 87(2)(b)'s pockets. PO Tonnessen did not see Sgt. Spalding search § 87(2)(b). According to the Stop and Frisk Report, a frisk was conducted, but a search was not.

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date